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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Respondent,

No. CR. S-96-0190 JAM GGH P

12 vs.

13 JAMES ROY BARRON,

14 Movant.

ORDER

15 _____/
16 Movant, a federal prisoner proceeding with appointed counsel, has timely filed a
17 notice of appeal of this court's October 23, 2008, denial of his motion to vacate, set aside, or
18 correct his sentence pursuant to 28 U.S.C. § 2255. Before movant can appeal this decision, a
19 certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

20 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the
21 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.
22 § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues
23 satisfy" the requirement. 28 U.S.C. § 2253(c)(3).

24 A certificate of appealability should be granted for any issue that movant can
25 demonstrate is "debatable among jurists of reason," could be resolved differently by a different
26 court, or is "adequate to deserve encouragement to proceed further." Jennings v. Woodford,

1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

2 Movant has made a substantial showing of the denial of a constitutional right in
3 the following issues presented in the instant § 2255 motion: 1) whether movant's trial counsel
4 provided ineffective assistance of counsel with regard to advising movant concerning his right to
5 testify in his own defense (claim 1); 2) whether the movant should have been determined to be
6 procedurally barred from proceeding on his straight claim of denial of the right to testify (claim
7 6).

8 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
9 issued in the present action.

10 DATED: March 18, 2009

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12 / /s/ John A. Mendez
13 UNITED STATES DISTRICT JUDGE
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.